

# Exhibit 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ENDO PHARMACEUTICALS, INC.,

Plaintiff,

v.

13 Civ. 3288 (TPG)

ROXANE LABORATORIES, INC.,

Defendant.

-----x

New York, N.Y.  
September 10, 2014  
11:50 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

DUANE MORRIS

Attorneys for Johnson Matthey, Inc.

BY: SUZAN JO

LOCKE LORD

Attorneys for Defendant

BY: KEITH PAR

WASIM K. BLEIBEL

ALAN CLEMENT

1 (Case called)

2 THE COURT: Who wants to speak for the motion?

3 MS. JO: Good morning, your Honor, my name is Suzan  
4 Jo. I'm from the law firm of Duane Morris and I will speak on  
5 behalf of the subpoena recipient --

6 THE COURT: Who is your client?

7 MS. JO: Johnson Matthey, Inc., the subpoena  
8 recipient.

9 THE COURT: Go back to the lecturn.

10 And you represent whom?

11 MS. JO: Johnson Matthey, Inc. That is the party that  
12 received the third-party subpoena from Roxane and it is our  
13 motion to quash the subpoena.

14 THE COURT: You go ahead.

15 MS. JO: Your Honor, Johnson Mathey is a third party  
16 to the litigation that is currently pending before your Honor.  
17 Johnson Mathey back in 2012 sold one of its patents to Endo  
18 Pharmaceuticals, which is the plaintiff in the case in chief,  
19 and the subpoena that was received by us sought documents and  
20 depositions regarding the transaction, which is the sale of the  
21 patent itself and also relates to a supply agreement which is  
22 between Johnson Mathey and Roxane. Our argument is basically  
23 that nothing that is in the --

24 THE COURT: Your argument is what?

25 MS. JO: Is that the documents that are sought have no

1 relationship whatsoever to the case that's pending before the  
2 Court, nor any of the affirmative defenses or the  
3 counterclaims.

4 THE COURT: What does the other side say?

5 MR. PAR: Your Honor, Keith Par on behalf of Roxane.

6 THE COURT: If you can go back to the lecturn.

7 I will go back to you, Ms. Jo, in just a minute.

8 MR. PAR: Good morning, your Honor, Keith Par on  
9 behalf of Roxane Laboratories.

10 Roxane Laboratories has a relationship with Johnson  
11 Mathey. We have a supply agreement that was entered into in  
12 2009 with Johnson Mathey. And then in March of 2012, we were  
13 approached by Johnson Mathey to amend that supply agreement,  
14 which occurred --

15 THE COURT: The earlier agreement did what?

16 MR. PAR: The amendment or the supply agreement?

17 THE COURT: The supply agreement.

18 MR. PAR: The supply agreement was an agreement under  
19 which Roxane would purchase its active pharmaceutical  
20 ingredient from Johnson Mathey for use in its ANDA product and  
21 that agreement still exists.

22 The amendment that was proposed by Johnson Mathey in  
23 2012 was entered into. We did not know this at the time. But  
24 a day later, on March 21, 2012, Johnson Mathey sold what they  
25 refer to in their patent purchase agreement as the patent

1 assets, which included the '482 patent. Thereafter, Endo, as  
2 the acquirer of that patent, sued Roxane, alleging infringement  
3 of that patent. Roxane in its answer then asserted a license  
4 defense because we have a right --

5 THE COURT: Can we step back.

6 MR. PAR: Yes.

7 I'm sorry. Asserted a license defense to the claim of  
8 infringement. And that license defense is based -- it's an  
9 implied license from the purchase of the API from Johnson  
10 Mathey which had the rights to sell the API to Roxane.

11 THE COURT: You are going a little fast for me.

12 MR. PAR: We had the right to purchase API, active  
13 pharmaceutical ingredient, for use in our ANDA product.

14 THE COURT: We being?

15 MR. PAR: We, Roxane, had the right to purchase from  
16 Johnson Mathey the active pharmaceutical ingredient needed for  
17 its ANDA product, for Roxane's ANDA products.

18 Endo, after acquiring the patent, sued Roxane,  
19 alleging infringement.

20 THE COURT: Wait a minute. Who owned the active  
21 ingredient?

22 MR. PAR: At the time that the supply agreement was  
23 entered into, JM, Johnson Mathey, had the right to manufacture  
24 that and to sell to Roxane.

25 THE COURT: JM had the rights to the active

1 ingredient, right?

2 MR. PAR: Yes. And JM is the company that applied for  
3 the patent that ultimately issued as the '482 patent.

4 THE COURT: So JM had the rights to that and applied  
5 for the patent.

6 MR. PAR: Yes.

7 THE COURT: Let me just make a note. I think I've got  
8 it. They owned the technology?

9 MR. PAR: Yes.

10 THE COURT: And then they applied for a patent?

11 MR. PAR: Yes.

12 THE COURT: Was the patent granted?

13 MR. PAR: Yes, it was, your Honor.

14 THE COURT: And what is it, the '48 --

15 MR. PAR: It's the '482 patent.

16 THE COURT: And when was that granted?

17 MR. PAR: I don't know the specific date, your Honor.  
18 I am sure it's in the record as to the date. It was issued on  
19 the face of the patent. I know it's attached to Endo's  
20 complaint. It would have been --

21 THE COURT: I don't have to have that.

22 MR. PAR: It's December 12 of 2010.

23 THE COURT: They got the patent and then what  
24 happened?

25 MR. PAR: And then in 2012, March 12 of 2012, JM

1 approached Roxane and asked for an amendment to that supply  
2 agreement.

3 THE COURT: Just a second. JM. I'm missing  
4 something. When did Roxane come into the picture?

5 MR. PAR: Roxane was in the picture with Johnson  
6 Mathey back in September of 2009. That is when the supply  
7 agreement was first entered into. Actually, there was an  
8 earlier relationship. There was a confidentiality agreement  
9 that was dated back to 2005.

10 THE COURT: And JM supplied the technology?

11 MR. PAR: It was committed by the agreement to supply  
12 the active ingredient, the finished product --

13 THE COURT: Supplied the active ingredient to Roxane?

14 MR. PAR: To Roxane, yes.

15 THE COURT: So JM owned the active ingredient.

16 MR. PAR: Yes.

17 THE COURT: JM was supplying the active ingredient to  
18 Roxane.

19 MR. PAR: It had a commitment to supply it. We  
20 obviously weren't on the market yet because we were under  
21 litigation from Endo in the first set of patents, but we were  
22 not on the market yet. But they had a commitment, a  
23 contractual obligation to supply that product. That's correct.

24 THE COURT: Contract to supply?

25 MR. PAR: That's correct.

1 THE COURT: And then JM gets a patent.

2 MR. PAR: They received a patent, yes.

3 THE COURT: And then I know you've been through this.  
4 Again, what happened after that?

5 MR. PAR: And then they approached --

6 THE COURT: Who is they?

7 MR. PAR: They, being JM, approached Roxane and asked  
8 for an amendment to the supply agreement.

9 THE COURT: Just a minute. JM approached Roxane and  
10 asked for what?

11 MR. PAR: An amendment to the supply agreement.

12 THE COURT: Doing what?

13 MR. PAR: The amendment restricted and limited  
14 Roxane's rights to use the API only for the subject of its then  
15 currently pending abbreviated new drug application; in other  
16 words, NDIR, in the immediate release version as well.

17 THE COURT: I'm not with you. They approached Roxane  
18 and asked for what again?

19 MR. PAR: They asked for an amendment that would  
20 restrict the scope of the supply agreement.

21 THE COURT: Restrict what?

22 MR. PAR: The scope of the supply agreement so that  
23 Roxane would only be able to use the API in its immediate  
24 release version and in its original formulation extended  
25 release version that it then had an ANDA pending on.



1 THE COURT: What was the significance of all of that?

2 MR. PAR: Well, there are these additional patents  
3 that have the Grunenthal patents that Endo is now asserting  
4 against other parties that have filed a crush-resistant  
5 formulation ANDA. There are those patents that are related to  
6 that. And it's our belief that Endo did not want JM to supply  
7 Roxane with any active pharmaceutical ingredient that could be  
8 used for a crush-resistant formulation. But having said that,  
9 Roxane does not have pending an ANDA for a crushed-resistant  
10 formulation.

11 THE COURT: They don't have pending of what?

12 MR. PAR: We do not have a pending abbreviated new  
13 drug application for a crush-resistant or tamper-resistant  
14 formulation. We just have an ANDA that's pending for --

15 THE COURT: What is an ANDA?

16 MR. PAR: The abbreviated new drug application with  
17 the FDA.

18 THE COURT: With the FDA?

19 MR. PAR: With the FDA.

20 Essentially what they were doing in that amendment is  
21 trying to limit the scope of what JM would supply to Roxane,  
22 and Roxane only had a pending abbreviated new drug application  
23 to seek approval for the sale of a version that was -- the  
24 original version; in other words, not the crush resistant  
25 formulation. So Roxane entered into that agreement with JM,

1 Johnson Mathey, the amendment to the supply agreement.

2 THE COURT: JM entered into the agreement with whom?

3 MR. PAR: With Roxane. The amendment to the supply  
4 agreement.

5 THE COURT: And then what happened?

6 MR. PAR: The very next day, March 21 of 2012, Johnson  
7 Mathey sold its patent assets, including the '482 patent, to  
8 Endo.

9 THE COURT: Who sold?

10 MR. PAR: Johnson Mathey sold to Endo the '482 patent.

11 THE COURT: Why did that happen the next day?

12 MR. PAR: We have learned in discovery -- let me just  
13 preface this by saying that much of what we have learned in  
14 discovery we have learned from Endo and it's subject to the  
15 protective order that's entered in this case. But we have  
16 learned that there were communications between Endo and Johnson  
17 Mathey relating to our agreements, our supply agreement in the  
18 First Amendment.

19 Why did they do it? I think those are questions that  
20 we would like answered ourselves from Johnson Mathey and from  
21 Endo. But we do know what happened thereafter. And what  
22 happened thereafter is Endo, after purchasing the '482 patent,  
23 sued Roxane alleging infringement of that patent. So Roxane is  
24 being sued on a patent that was obtained by Johnson Mathey,  
25 sold by Johnson Mathey --

1 THE COURT: You represent --

2 MR. PAR: Roxane. And for the record, let me just say  
3 that Endo is not here at the hearing today. They are not  
4 present here at the hearing today. I just wanted to make that  
5 clear. I don't know why they are not present, but they are not  
6 here.

7 THE COURT: You served the subpoena?

8 MR. PAR: We served the subpoena on Johnson Mathey.  
9 And what we have asked for is a full, unredacted version of the  
10 patent purchase agreement pursuant to which the patent was sold  
11 by Johnson Mathey to Endo. And that document is the document  
12 that Endo is relying on to prove that it has title to the '482  
13 patent. But the original, fully or complete unredacted version  
14 has never been produced to Roxane.

15 Essentially, we are being sued on a patent that was  
16 purchased by Endo and neither Endo nor Johnson Mathey will give  
17 us the full, unredacted copy of the patent purchase agreement  
18 under which the rights were supposedly transferred or allegedly  
19 transferred.

20 THE COURT: What do you think is sort of lurking  
21 there? What are you suspicious of?

22 MR. PAR: We know in Section 3.2 of the agreement,  
23 from a title heading, that there is a grant-back license. We  
24 also know, from the index or actually the definition sections,  
25 that there are a number of terms that are defined in the

1 section that's redacted.

2 One term, for instance, is existing contract term in  
3 Section 1.17 of the agreement. It says: Has the meaning set  
4 forth in Section 3.2A(iii). And when you look at Section  
5 3.2(iii), you can't see it because it's redacted. So we don't  
6 know what that provision says and we need to know what that  
7 provision says because we are being accused of infringement for  
8 a patent that has purchased by Endo from a company that we had  
9 a supply agreement with and still have a supply agreement. And  
10 we have tried to work this out with Johnson Mathey.

11 It's never been clear to us and we do not understand  
12 why Johnson Mathey doesn't want to supply to its customer a  
13 document that would help its customer get on the market. And  
14 the answer to that question must be that there is something  
15 valuable or something in this patent purchase agreement that  
16 gives Johnson Mathey rights that are greater than the rights or  
17 the value that they would get by honoring their commitment to  
18 supply us with product. And we don't know --

19 THE COURT: I'm not following you now at all.

20 MR. PAR: We are being sued. We have a licensed  
21 defense. In Johnson Matthey's papers seeking to quash the  
22 subpoena they have said, well, if you have a licensed defense,  
23 then you already have the supply agreement and you already have  
24 the first amendment to the supply agreement. That should be  
25 enough.

1 Well, I will tell you, your Honor, that we have those  
2 documents, yes. But also Endo has those documents and  
3 apparently they don't mean anything to Endo or there is  
4 something in this agreement that Endo thinks somewhat trumps  
5 that or overweighs it because Endo is still suing us under the  
6 '482 patent.

7 You may recall a year ago, it was actually not quite a  
8 year ago, September 12, we had the preliminary injunction  
9 hearing. And at that hearing Endo did not bring the '482  
10 patent against Roxane. In other words, they did not pursue  
11 that patent against Roxane. They pursued it against Actavis,  
12 but not against Roxane. And we thought and we have thought  
13 that they would potentially dismiss that patent against Roxane  
14 as the litigation progressed. But as late at last week we  
15 received a letter from Endo saying that they are asserting  
16 claim 4 of the '482 patent against Roxane.

17 And we need this document, the patent purchase  
18 agreement, with this grant-back license provision so that we  
19 can look at it and we can develop a defense. Johnson Mathey  
20 says, we should have a defense to the patent based on our  
21 supply agreement and our first amendment. But Endo obviously  
22 isn't honoring that. And we need to know why. Because it  
23 doesn't make sense to us.

24 THE COURT: Who obtained, originally obtained the '482  
25 patent?

1 MR. PAR: Johnson Mathey.

2 THE COURT: This was at a time when Johnson Mathey was  
3 supplying this active ingredient to Roxane, right?

4 MR. PAR: It had certainly had an obligation to  
5 supply, yes. I don't know how much was being supplied there  
6 for -- they had an obligation as of September 2009, yes.

7 THE COURT: In other words, it was contemplated that  
8 this would be done.

9 MR. PAR: That's right.

10 THE COURT: If things cleared?

11 MR. PAR: That's right.

12 THE COURT: So JM was going to supply the active  
13 ingredient to Roxane?

14 MR. PAR: Yes.

15 THE COURT: And as of that time there was no patent.

16 MR. PAR: The patent was in application at that time.

17 THE COURT: JM got a patent.

18 MR. PAR: Yes.

19 THE COURT: December 12, 2010. So JM now has a  
20 patent.

21 MR. PAR: They sold the patent to Endo in March of  
22 2012, the day after --

23 THE COURT: You're getting ahead. JM got the patent.  
24 They have been selling the active ingredient to Roxane. They  
25 got the patent. Now, did they stop selling the active

1 ingredient to Roxane?

2 MR. PAR: We have not got on the market yet. The IR  
3 product they are still selling. Yes, they are still selling as  
4 active for the IR product.

5 THE COURT: Say that again.

6 MR. PAR: There is an immediate-release version of the  
7 drug and they are selling us the active ingredient --

8 THE COURT: In other words, JM is dealing with Roxane.

9 MR. PAR: Yes. We have an existing contractual  
10 relationship with them to this day.

11 THE COURT: And then JM got a patent.

12 MR. PAR: Yes.

13 THE COURT: Now they decide to deal with Endo.

14 MR. PAR: Yes.

15 THE COURT: What is Endo trying to prevent Roxane from  
16 doing?

17 MR. PAR: They are trying to prohibit us, enjoin us  
18 from selling any product. They are asserting patent  
19 infringement against us.

20 THE COURT: Selling what?

21 MR. PAR: They are asserting patent infringement  
22 allegations against us based on claim 4 of the '482 patent.

23 THE COURT: Which is crush resistant?

24 MR. PAR: No. The '482 is the low ABUK patent.

25 THE COURT: The what?

1 MR. PAR: The low ABUK patent, low level.

2 THE COURT: Now you have served a subpoena.

3 MR. PAR: Yes.

4 THE COURT: And you seek what in the subpoena?

5 MR. PAR: And we seek in the subpoena the production  
6 of the full, unredacted version of the patent purchase  
7 agreement which has that grant-back license in it. We also  
8 seek testimony and documents relating to the communications  
9 between Roxane and Endo relating to how our amendment was  
10 instigated, who implemented that, who was involved, and coming  
11 to Roxane and proposing the amendment in March of 2012, who was  
12 involved in the purchase of that patent and what were the terms  
13 under which -- all the terms under which it was purchased.

14 Even the section of the patent purchase agreement that  
15 has the heading transfer of patent assets has a clause that  
16 refers back to Section 3.2D, which is a part of the document  
17 that's unredacted. So even for purposes of Endo proving that  
18 they have rights in this patent to assert against someone, we  
19 need the full document to know what the full scope of those  
20 rights are, whether there is a limitation on those rights,  
21 whether there is a limitation that's specific as to Roxane,  
22 which we believe there is, and whether there is perhaps a  
23 reversion interest. We don't know what the other terms of this  
24 patent purchase agreement is.

25 And if you think about this, and maybe this analogy



1 isn't the best, let's say we have to prove that we own land and  
2 there is a deed that is the item that we need to use to prove  
3 that we own land. And if part of that deed is stricken out or  
4 redacted, how can you prove that you actually own the land.  
5 That's the same thing about this patent purchase agreement.  
6 They have said that they have title to this patent that they  
7 are suing us on based on this agreement, but then neither Endo  
8 nor Johnson Mathey will give us a copy of the full agreement.

9 THE COURT: Say the latter again. Repeat that.

10 MR. PAR: They are suing us for patent infringement  
11 based on the '482 patent, and they are claiming that they have  
12 rights under the patent purchase agreement, but neither Endo  
13 nor Johnson Mathey will give us a full copy of the patent  
14 purchase agreement pursuant to which they supposedly had those  
15 rights. If you were trying the case --

16 THE COURT: In other words, they acquired the patent.  
17 They didn't obtain the patent; they acquired it.

18 MR. PAR: That's right.

19 THE COURT: They bought it from JM.

20 MR. PAR: That's right.

21 THE COURT: What you are seeking to know is under what  
22 terms that was bought.

23 MR. PAR: Yes. That's absolutely right.

24 THE COURT: Let's hear from the other side. And you  
25 represent.

1 MS. JO: I represent Johnson Matthey, not Endo, but  
2 Johnson Matthey. I have not spoken with counsel for Endo with  
3 respect to the subpoena whatsoever.

4 Johnson Matthey has no interest in the litigation that  
5 is currently between Endo and Roxane. Johnson Matthey sold the  
6 '482 patent to Endo in 2012. As part of that sale they did  
7 seek an amendment to the existing supply agreement that JM had  
8 with Roxane, and Roxane agreed to the amendment to the  
9 agreement. So the supply agreement as exists between JM and  
10 Roxane contains the amendment that went into effect in March of  
11 2012.

12 THE COURT: Contains the what?

13 MS. JO: The amendment. So there is a supply  
14 agreement and there is an amendment to the supply agreement.  
15 The two documents together is the effective supply agreement  
16 right now.

17 THE COURT: And that supply agreement is between whom  
18 and whom?

19 MS. JO: JM and Roxane.

20 THE COURT: Roxane is being sued for patent  
21 infringement, right?

22 MS. JO: Correct. By Endo. Who is now the holder and  
23 owner of the patent.

24 THE COURT: And Endo's rights are contained in an  
25 agreement, right?

1 MS. JO: Correct.

2 THE COURT: Endo got its rights by an agreement with  
3 JM.

4 MS. JO: Correct. And the patent purchase agreement  
5 has been produced to Roxane by Endo in a form with some key and  
6 confidential terms redacted out. So from my perspective -- I  
7 am not intimately involved in the Endo and Roxane litigation.  
8 But the only purpose that the purchase agreement, the patent  
9 purchase agreement can serve is to prove Endo's ownership of  
10 the patent and to really have the right --

11 THE COURT: To prove what?

12 MS. JO: Endo's ownership of the '482 patent. Because  
13 not being a patent attorney --

14 THE COURT: Ownership under what conditions?

15 MS. JO: The PPA, the patent purchase agreement, or  
16 the PPA, as redacted, provides the key conditions of the sale  
17 of the patent to Endo. That has already been produced to  
18 Roxane.

19 THE COURT: But it's been produced in redacted form.

20 MS. JO: Correct. But the unredacted portions bear  
21 out the commercial terms of the deal between JM and Endo. What  
22 they are now seeking are grant-back licenses or the portion  
23 which grants certain rights back to JM for the production of  
24 the active agreement or, I guess, the raw material.

25 What they are claiming is something in that grant-back

1 license gives Roxane a license to produce the generic drug that  
2 is at issue in the litigation.

3 Now, what possible license can an agreement between  
4 Endo and JM give to Roxane who is not a party --

5 THE COURT: Can I just interrupt you. Sitting here as  
6 a judge, I have questions in my mind just as a judge because  
7 this was a very interesting series of events. And the full  
8 meaning of those events, it seems to me, Roxane should be able  
9 to get --

10 MS. JO: Your Honor, there might be an intellectual  
11 curiosity as to the series --

12 THE COURT: I am not talking about an intellectual  
13 curiosity. I'm talking about substantive issues. I'm not  
14 sitting here asking you about intellectual curiosity. Do you  
15 understand?

16 MS. JO: I understand that, your Honor. But what I do  
17 not understand from Roxane's papers myself is how the chain of  
18 events gives their defense any credence or has any bearing on  
19 the infringement claim.

20 THE COURT: How did they know when they don't have all  
21 the materials?

22 MS. JO: It is only here today that they are saying  
23 that what they want is the unredacted. What they also want,  
24 your Honor, that is asked for in the subpoena are all  
25 communications between Endo and JM regarding the transaction,

1 the sale of the patent. They are also asking for internal  
2 communications, JM internal communications regarding the sale  
3 of the patent and the amendment to the supply agreement. Why  
4 JM sold the patent and under what business decisions were made  
5 in the sale of the patent and why they sought the amendment to  
6 the supply agreement really doesn't affect Roxane or Endo's  
7 rights in any way. They are looking for internal  
8 communications of JM as well. They are looking to depose Bill  
9 Youngblood, who is the in-house counsel for JM who was the  
10 point person or the key counsel for JM in the sale of the  
11 patent.

12 Now, they are looking for a lot of things that are  
13 proprietary and business decision making communications from  
14 JM. They are not just looking for materials. They are not  
15 just looking for the unredacted form of the PPA. Even the  
16 unredacted --

17 THE COURT: The problem is, from Roxane's point of  
18 view, they were dealing in a perfectly normal commercial way,  
19 and all of a sudden a series of transactions occurs and they  
20 are being sued for patent infringement. So all of a sudden  
21 normal commercial relationships get transformed into a patent  
22 infringement claim. They simply want to know how that  
23 happened. Am I right?

24 MR. PAR: Yes. We want to know the details of what  
25 happened.

1           THE COURT: This was not a little game that was  
2 played. This was a very serious thing. They are now subject  
3 to patent infringement claims and that was a very substantial  
4 transformation from a commercial relationship into possibly an  
5 infringement relationship.

6           We have taken a long time to discuss it. The motion  
7 to quash is denied. Thank you very much.

8                           OOo